IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.307/2007

Judgment delivered on: November 26, 2007

National Insurance Co. Ltd. ..... Appellant

Through: Mr.S.L. Gupta, Adv.

versus

Shashi Kant Gupta & Ors. ..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

The appellant, National Insurance Company Ltd., insurer of the offending vehicle has preferred an appeal challenging the impugned order dated 21.03.2007 passed by the learned MACT. The impugned award has arisen out of three claim petitions, viz., Suit nos. 67/2006; 68/2006 & 69/2006 filed by respondent No.1 against the appellant as well as against respondent Nos.2 & 3 claiming compensation for the death of Shri Dharam Chand Gupta.

The brief facts which are necessary for deciding the present appeal inter alia are that respondent No.1 is the legal heir of deceased Shri Dharam Chand Gupta who died on 30.04.2005 at the site of the accident itself. On 30.04.2005 deceased Shri Dharam Chand Gupta and deceased Smt. Jaswanti Devi along with their children were travelling from Delhi to Jind in the car bearing registration no. DL 3CJ 2901. On their reaching Jind Road at about 11:15 am, a Swaraj Majda bearing registration no. HR 46A 8146 driven by its driver in a rash and negligent manner and at a very high speed came from the wrong side and hit the front of the aforesaid car with a great force. All the incumbents of the car received serious injuries whereas, Shri Dharam Chand Gupta died

on the spot. The Tribunal after taking into consideration the facts of the cases as well as evidence led by the parties had passed an award in the sum of Rs. 4,30,000/- along with interest at the rate of 8% per annum payable from the date of the institution of the petition till the date of realization in suit no. 67/2006; Rs. 3,51,000/- along with interest at the rate of 8% per annum payable from the date of the institution of the petition till the date of realization in suit no. 68/2006 and Rs. 3,75,000/- along with interest at the rate of 8% per annum payable from the date of the institution of the petition till the date of realization in suit no. 69/2006. The said order passed by the Tribunal is now under challenge in the present appeal.

I have heard learned counsel for the appellant at considerable length.

Counsel for the appellant contends that in the written statement the insurance company had prayed to the learned tribunal to allow it to take over the defence available under Section 170 of the Motor Vehicles Act on the non-participation of the driver or the owner or on their being proceeded ex-parte, but specific order was not passed by the Tribunal. The contention of counsel for the appellant is that there is no fault on the part of the

appellant if no speaking order was passed by the Tribunal and, therefore, the appellant cannot be deprived of the remedy of appeal to challenge the award even on the grounds of quantum and negligence. Counsel further contends that there is a deemed permission in favour of the appellant as the appellant did move an application before the Tribunal under Section 170 of the Motor Vehicles Act but the Court did not pass any order thereto and, therefore, it cannot be assumed that permission under Section 170 of the Motor Vehicles Act was not granted by the Tribunal. Counsel for the appellant has placed reliance on the judgment of the Supreme Court reported in *2007 (9) Scale 216,* **New India Assurance Company Ltd. Vs. Smt. Shanti Pathak & Ors.** to contend that the Apex Court had interfered to lower down the compensation amount even in a case where the insurer had not taken any permission from the Court under Section 170 of the Motor Vehicles Act. The counsel for the appellant also contends that the Hon'ble Supreme Court has already referred the said issue of lack of competence of the insurer to assail the findings of the Tribunal on the ground of quantum of compensation and negligence to a larger Bench and, therefore, this Court may award the decision of the Supreme Court in this regard.

After having given my thoughtful and conscious consideration to the issue involved in the present case, I am of the view that the issue is no more res integra as in a catena of judgments the Hon'ble Supreme Court has authoritatively held that right to file an appeal is a statutory right and the insurer can assail the findings of the Tribunal under Section 149(2) of the Motor Vehicles Act, only in a case where there is collusion between the claimants and the insured that the insurer can assail the findings of the Tribunal on the grounds of quantum as well as negligence, subject however to the condition that the insurer had taken permission of the Court to take over the defence of the owner or driver as the case may be as envisaged under Section 170 of the Motor Vehicles Act. No such permission was granted to the appellant under Section 170 of the Motor Vehicles Act by the Tribunal and, therefore, in the absence of the same, the appellant being the insurer of the offending vehicle cannot maintain the present appeal on grounds other than those available to it under Section 149(2) of the Motor Vehicles Act.

It would be appropriate to refer Section 170 of the Motor Vehicles Act as under:-

"**170. Impleading insurer in certain cases**- Where

> in the course of any inquiry the Claims Tribunal is satisfied that -
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> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
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> (b) the person against whom the claim is made has failed to contest the claim,
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> It may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

Admittedly, no such permission under Section 170 of the Motor Vehicles Act was obtained by the appellant which clearly meant that the circumstances as envisaged under Section 170 of the Motor Vehicles Act were not in existence for the Court to grant such permission. In the judgment of the Supreme Court reported in (*1998) 3 SCC 140,* ***Shankarayya Vs. United India Insurance Co. Ltd.,*** the Apex Court has held that the insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the

conditions preceding mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and such an order should be a reasoned order of the Tribunal. In such circumstances unless the said procedure is followed, the appellant insurer cannot have a wider defence on merits than what is available to it by way of a statutory defence. Ralevant part of Para 4 of the said judgment in this regard is referred as under:-

> "**4.** It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. "

In view of the said legal position, I cannot appreciate the argument of counsel for the appellant that there is a deemed permission in favour of the appellant. Once the application under Section 170 of the Motor Vehicles Act was preferred by the appellant before the Tribunal for taking over the defence of an

owner or driver, the Tribunal is required to pass specific order and that too a reasoned order as per the observations of the Supreme Court referred above and, therefore, the argument of counsel for the appellant cannot be appreciated that filing of an application under Section 170 of the Motor Vehicles Act by the appellant in this regard was a sufficient compliance of a said statutory requirement.

In the light of the above discussion, I do not find any merit in the submission of counsel for the appellant. In the judgment cited by the counsel in **Shanti Pathak's** case (supra) the Hon'ble Apex Court has not dealt with the said legal proposition and, therefore, the same is not applicable in the facts and circumstances of the present case.

There is no merit in the appeal and the same is dismissed.

November 26, 2007 **KAILASH GAMBHIR, J.**